



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/07474/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 27 September 2018**

**Decision & Reasons Promulgated
On 13 November 2018**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

YASSIN EL MAYA
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant did not appear and was not represented
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS
(extemporaneous judgment)

1. This is an appeal by a citizen of Morocco against the decision of the First-tier Tribunal dismissing his appeal against the decision of the Secretary of State refusing him leave to remain as the spouse of a settled person.
2. I was surprised that the appellant was not represented before me. In the First-tier Tribunal he was represented by experienced Counsel, Mr D Bazini, who settled the grounds of appeal and a message from clerk came to me yesterday asking for a time marking. I do not know that the barrister who was seeking the time marking was the barrister instructed to

appear today but the message came from the same clerk. Clearly there was a professional interest in the case yesterday. I expected the person representing the appellant to have been here today. Certainly I said nothing to discourage someone from attending on time. That said, when it was convenient to deal with the case at approximately 11.30 a.m. there was no appearance from the appellant or his representative or any explanation for absence and I decided to continue in their absence having discussed the case with Mr Bramble for the Secretary of State.

3. This is not straightforward. Mr Bazini's first point in his grounds is that the First-tier Tribunal Judge wrongly and inappropriately decided that the marriage was one of convenience. This had never been the Secretary of State's case and had not been argued. The finding is worrying for two reasons. First, I wonder why the judge took the point at all and second, I wonder how much that unexpected and potentially illuminating adverse finding impacted on the other adverse findings in the case. Maybe the answer is "not at all" but the concern is that it might have done and could it give the appearance of injustice if I went through the decision and separated out those findings relating entirely to whether or not there was a marriage of convenience from and the findings about whether or not there was a subsisting marriage.
4. The second area of dispute has been characterised as a procedural irregularity although that may not really be right. The complaint in the grounds, as I understand them, is that the First-tier Tribunal failed to acknowledge a concession by the Presenting Officer. I accept Mr Bramble's submission that there was no concession or at least the word "concession" should not have been used in the grounds because it gives a wrong impression of what had happened. I am not persuaded that the Presenting Officer formally conceded any part of the case but the Presenting Officer did accept that there were credible elements in the appellant's case and, as I understand it, made submissions on the basis that notwithstanding there being credible and consistent answers there were also difficulties. This is not a case where, as far as I can see, a concession has been ignored.
5. The way the Presenting Officer put the case in the First-tier Tribunal though does lead to what I think might be called the third point, that the First-tier Tribunal did not consider the case in the round but rather focused on points that were against the case without being seen to weigh them against points in favour. Mr Bazini's grounds go some way to showing that some of the points taken against the appellant might not have been well-founded at all. I have reflected on that but there is an unchallenged finding that there was an obvious and glaring difficulty in the evidence and that is that the parties to the alleged marriage could not agree where they spent the evening before the hearing before the First-tier Tribunal Judge. That inconsistency, in many circumstances, might be a telling point. Possibly it is so telling that it is decisive. However when I consider the matter in the round, and bearing in mind the possibility of prejudice because of an inappropriate fixation with whether or not this was a marriage of

convenience, I cannot be satisfied that it is right to dismiss the appeal for that one point.

6. The other points are not established.
7. It follows therefore that I am not satisfied that this is a lawful decision because it concerns itself with irrelevant matters and I set it aside.
8. This case has to be determined again and at the moment the most practical way of dealing with that is to send it back to the First-tier Tribunal where it can be decided again. That therefore is my decision.

Decision

9. The appeal is allowed. The decision is set aside and I direct the case be decided again in the First-tier Tribunal.



Jonathan Perkins

Judge of the Upper Tribunal

Dated 6 November 2018